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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 JENNIFER RIVERA, on behalf of herself, all
others similarly situated,

13 *Plaintiff,*

14 vs.
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16 WELLS FARGO BANK, NATIONAL
ASSOCIATION, a national banking
association; and DOES 1 through 100,
17 inclusive,

18 *Defendants.*
19
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Case No. 17-cv-06885-JD

Assigned For All Purposes to the Honorable
James Donato, Courtroom 11

CLASS ACTION

FIRST AMENDED COMPLAINT

1. Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act);
2. Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act);
3. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*);

JURY TRIAL DEMANDED

COMES NOW, Plaintiff JENNIFER RIVERA (referred to as "Plaintiff"), on behalf of herself, all others similarly situated, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action against defendant WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association; and DOES 1 through 100, inclusively (collectively referred to as "Defendants") for alleged violations of the Fair Credit Reporting Act ("FCRA").

2. Plaintiff alleges that Defendants routinely acquire consumer, investigative consumer and/or consumer credit reports (referred to collectively as "credit and background reports") to conduct background checks on Plaintiff and other prospective, current and former employees and use information from credit and background reports in connection with their hiring process without complying with the law. Plaintiff, individually and on behalf of all others similarly situated current, former, and prospective employees, seeks compensatory and punitive damages due to Defendants' systematic and willful violations of the FCRA, 15 U.S.C. §§ 1681 *et seq.*

PARTIES

3. Plaintiff JENNIFER RIVERA is, and at all relevant times mentioned herein, an individual residing in the State of California.

4. Plaintiff is informed and believes, and thereupon alleges that Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION is, and at all relevant times mentioned herein, a national banking association doing business in the State of California.

5. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 100, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

6. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the

1 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
 2 and scope of such agency or employment, and with the approval and ratification of each of the
 3 other Defendants.

4 7. Plaintiff alleges that each and every one of the acts and omissions alleged herein
 5 were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees,
 6 and/or under the direction and control of each of the other defendants, and that said acts and
 7 failures to act were within the course and scope of said agency, employment and/or direction and
 8 control.

9 JURISDICTION AND VENUE

10 8. This Court has original subject matter jurisdiction over Plaintiff's claims pursuant to
 11 28 U.S.C. section 1331 because these claims seek redress for violation of Plaintiff's and the putative
 12 class' federal statutory rights under the Fair Credit Reporting Act (15 U.S.C. sections 1681 *et seq.*).

13 9. Venue is proper in this District under 28 U.S.C. section 1391(b)(2) and (c) because a
 14 substantial part of the events and omissions giving rise to the claims alleged in this complaint
 15 occurred in this District.

16 10. This Court has personal jurisdiction over this matter because Defendants conduct
 17 substantial business activity in this District, and because many of the unlawful acts described in this
 18 complaint occurred in this District and gave rise to the claims alleged.

19 CLASS ALLEGATIONS

20 11. This action has been brought and may be maintained as a class action pursuant to
 21 Federal Rules of Civil Procedure 23 because there is a well-defined community of interest among
 22 the persons who comprise the readily ascertainable classes defined below and because Plaintiff is
 23 unaware of any difficulties likely to be encountered in managing this case as a class action.

24 12. **Class Definitions:** The classes are defined as follows:

25 **FCRA Class:** All of Defendants' current, former and prospective applicants for
 26 employment in the United States who applied for a job with Defendants at any time during
 27 the period for which a background check was performed beginning on and after June 1,
 2015 and ending on the date that final judgment is entered in this action.

28 13. **Reservation of Rights:** Plaintiff reserves the right to amend or modify the class

1 definitions with greater specificity, by further division into subclasses and/or by limitation to
2 particular issues.

3 14. **Numerosity:** The class members are so numerous that the individual joinder of
4 each individual class member is impractical. While Plaintiff does not currently know the exact
5 number of class members, Plaintiff is informed and believes that the actual number exceeds the
6 minimum required for numerosity under California law.

7 15. **Commonality and Predominance:** Common questions of law and fact exist as to
8 all class members and predominate over any questions which affect only individual class members.
9 These questions include, but are not limited to:

- 10 A. Whether Defendants failed to comply with the requirements of 15 U.S.C.
11 7001 section 101(c)(1);
- 12 B. Wherein Defendants willfully failed to provide the class with stand-alone
13 written disclosures before obtaining a credit or background report in
14 compliance with the statutory mandates;
- 15 C. Whether Defendants willfully failed to identify the name, address, telephone
16 number, and/or website of the investigative consumer reporting agency
17 conducting the investigation;
- 18 D. Whether Defendants willfully failed to identify the source of the credit report
19 to be performed;
- 20 E. Whether Defendants willfully failed to comply with the FCRA.

21 16. **Typicality:** Plaintiff's claims are typical of the other class members' claims.
22 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or a
23 lack of a policy which resulted in Defendants failing to comply with the FCRA as alleged herein.

24 17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
25 that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
26 class members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of class
27 members. Plaintiff will fairly and adequately represent and protect the interests of class members.

28 18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that

1 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
 2 class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff
 3 and absent class members.

4 19. **Superiority:** A class action is vastly superior to other available means for fair and
 5 efficient adjudication of class members' claims and would be beneficial to the parties and the
 6 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
 7 and efficiently prosecute their common claims in a single forum without the unnecessary
 8 duplication of effort and expense that numerous individual actions would entail. In addition, the
 9 monetary amounts due to many individual class members are likely to be relatively small and
 10 would thus make it difficult, if not impossible, for individual class members to both seek and
 11 obtain relief. Moreover, a class action will serve an important public interest by permitting class
 12 members to effectively pursue the recovery of monies owed to them. Further, a class action will
 13 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

14 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

15 20. Plaintiff was employed by Defendant as an hourly, non-exempt employee working
 16 in the State of California beginning on or about July 2015 through July 2016.

17 21. When Plaintiff applied for employment with Defendants, Defendants performed a
 18 background investigation on Plaintiff.

19 22. Defendants did not provide legally compliant disclosure and authorization forms to
 20 Plaintiff and the putative class in that they were part of a six-page online employment application
 21 and a four-page offer letter which (1) did not contain any kind of proper disclosure as required
 22 pursuant to the FCRA and related state laws; (2) did not contain any summary of rights required
 23 pursuant to the FCRA and related state laws; and (3) did not contain any kind of proper
 24 authorization to obtain a consumer report and/or investigative consumer report regarding Plaintiff.

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FIRST CAUSE OF ACTION

FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE FCRA

(15 U.S.C. §§ 1681b(b)(2)(A))

(By Plaintiff and the FCRA Class Against All Defendants)

23. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24. Defendants are “persons” as defined by Section 1681a(b) of the FCRA.

25. Plaintiff and class members are “consumers” within the meaning Section 1681a(c) of the FCRA, because they are “individuals.”

26. Section 1681a(d)(1) of the FCRA defines “consumer report” as

any oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility” for employment purposes.

Thus a credit and background report qualifies as a consumer report.

27. Section 1681a(e) of the FCRA defines “investigative consumer report” as:

a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with whom he is acquainted or who may have knowledge concerning any such items of information.

Thus a credit and background report qualifies as an investigative consumer report.

28. Section 1681b(b) of the FCRA provides, in relevant part:

Conditions for furnishing and using consumer reports for employment purposes

(2) Disclosure to consumer

(A) In general

Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

- i. **a clear and conspicuous** disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that **consists solely of the disclosure**, that a consumer report may be obtained for employment purposes; and

1 ii. the consumer has authorized in writing (which authorization may be
2 made on the document referred to in clause (i)) the procurement of
3 the report by that person.
(Emphasis Added).

4 29. Section 1681b(b)(2)(A)(i) requires that a clear and conspicuous disclosure be made
5 in writing.

6 30. Because Defendant's disclosures do not meet the requirement of Section 101(c)(1)
7 of 15 U.S.C. 7001, the disclosures do not satisfy the written requirement.

8 31. As described above, Plaintiff alleges, on information and belief, that in evaluating
9 her and other class members for employment, Defendants procured or caused to be prepared credit
10 and background reports (i.e., a consumer report and/or investigative consumer report, as defined by
11 15 U.S.C. § 1681a(d)(1)(B) and 15 U.S.C. § 1681a(e)).

12 32. The purported disclosures do not meet the requirements under the law because
13 they are embedded with extraneous information, and are not clear and unambiguous disclosures in
14 stand-alone documents.

15 33. Under the FCRA, it is unlawful to procure or caused to be procured, a consumer
16 report or investigative consumer report for employment purposes unless the disclosure is made in a
17 document that consists solely of the disclosure and the consumer has authorized, in writing, the
18 procurement of the report. 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii). The inclusion of a release and other
19 extraneous information, therefore, violates § 1681b(b)(2)(A) of the FCRA.

20 34. Although the disclosure and the authorization may be combined in a single
21 document, the Federal Trade Commission ("FTC") has warned that the form should not include
22 any extraneous information or be part of another document. For example, in response to an inquiry
23 as to whether the disclosure may be set forth within an application for employment or whether it
24 must be included in a separate document, the FTC stated:

25 The disclosure may not be part of an employment application because the language [of 15
26 U.S.C. § 1681b(b)(2)(A) is] intended to ensure that it appears conspicuously in a document
27 not encumbered by any other information. The reason for requiring that the disclosure be in
28 a stand-alone document is to prevent consumers from being distracted by other information
side-by-side within the disclosure.

35. The plain language of the statute also clearly indicates that the inclusion of a

liability release in a disclosure form violates the disclosure and authorization requirements of the FCRA, because such a form would not consist “solely” of the disclosure. In fact, the FTC expressly has warned that the FCRA notice may not include extraneous information such as a release. In a 1998 opinion letter, the FTC stated:

[W]e note that your draft disclosure includes a waiver by the consumer of his or her rights under the FCRA. The inclusion of such a waiver in a disclosure form will violate Section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist ‘solely’ of the disclosure that a consumer report may be obtained for employment purposes.

36. In a report dated July 2011, the FTC reiterated that: “the notice [under 15 U.S.C § 1681b(b)(2)(A)] may not include extraneous or contradictory information, such as a request for a consumer’s waiver of his or her rights under the FCRA.”

37. By including a release and other extraneous information, Defendants willfully disregarded the FTC’s regulatory guidance and violated Section 1681b(b)(2)(A) of the FCRA. Additionally, the inclusion of the extraneous provisions causes the disclosure to fail to be “clear and conspicuous” and “clear and accurate,” and thus violates §§ 1681b(b)(2)(A) and 1681d(a).

38. Defendants’ conduct in violation of Section 1681b(b)(2)(A) of the FCRA was and is willful. Defendants acted in deliberate or reckless disregard of their obligations and the rights of applicants and employees, including Plaintiff and class members. Defendants’ willful conduct is reflected by, among other things, the following facts:

(a) Defendants are a large corporation with access to legal advice;

(b) Defendants required a purported authorization to perform credit and background checks in the process of employing the class members which, although defective, evidences Defendants’ awareness of and willful failure to follow the governing laws concerning such authorizations;

(c) The plain language of the statute unambiguously indicates that inclusion of a liability release and other extraneous information in a disclosure form violates the disclosure and authorization requirements; and

(d) The FTC’s express statements, pre-dating Defendants’ conduct, which state that it is a violation of Section 1681b(b)(2)(A) of the FCRA to include a liability waiver in the

1 FCRA disclosure form.

2 39. Defendants required a liability release, in the disclosure form, along with other
3 extraneous information, that releases all parties involved from any liability and responsibility for
4 releasing information they have about the Plaintiff to Defendants.

5 40. Based upon the facts likely to have evidentiary support after a reasonable
6 opportunity for further investigation and discovery, Plaintiff alleges that Defendants have a policy
7 and practice of procuring investigative consumer reports or causing investigative consumer reports
8 to be procured for applicants and employees without informing such applicants of their right to
9 request a summary of their rights under the FCRA at the same time as the disclosure explaining
10 that an investigative consumer report may be made. Pursuant to that policy and practice,
11 Defendants procured investigative consumer reports or caused investigative consumer reports to be
12 procured for Plaintiff and class members, as described above, without informing class members of
13 their rights to request a written summary of their rights under the FCRA.

14 41. Accordingly, Defendants willfully violated and continue to violate the FCRA
15 including, but not limited to, §§ 1681b(b)(2)(A) and 1681d(a). Defendants' willful conduct is
16 reflected by, among other things, the facts set forth above.

17 42. As a result of Defendants' illegal procurement of credit and background reports by
18 way of their inadequate disclosures, as set forth above, Plaintiff and class members have been
19 injured including, but not limited to, having their privacy and statutory rights invaded in violation
20 of the FCRA.

21 43. Plaintiff, on behalf of herself and all class members, seeks all available remedies
22 pursuant to 15 U.S.C. § 1681n, including statutory damages and/or actual damages, punitive
23 damages, injunctive and equitable relief and attorneys' fees and costs.

24 44. In the alternative to Plaintiff's allegation that these violations were willful, Plaintiff
25 alleges that the violations were negligent and seeks the appropriate remedy, if any, under 15 U.S.C.
26 § 1681o, including actual damages and attorneys' fees and costs.

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SECOND CAUSE OF ACTION

FAILURE TO GIVE PROPER SUMMARY OF RIGHTS IN VIOLATION OF FCRA

(15 U.S.C. § 1681d(a)(1) and 1681g(c))

(By Plaintiff and the FCRA Class Against All Defendants)

45. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

46. Section 1681d provides:

(a) Disclosure of fact of preparation

A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is *clearly and accurately disclosed* to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure;

(A) is *made in a writing mailed, or otherwise delivered*, to the consumer, not later than three days after the date on which the report was first requested, and

(B) *includes a statement informing the consumer of his right to request the additional disclosures* provided for under subsection (b) of this section *and the written summary of the rights of the consumer prepared pursuant to section 1681g(c)* of this title; and

(2) the person certifies or has certified to the consumer reporting agency that—

(A) the person has made the disclosures to the consumer required by paragraph (1); and

(B) the person will comply with subsection (b) of this section.

(Emphasis Added.)

(b) Disclosure on request of nature and scope of investigation

Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1) of this section (a)(1) of this section, make a *complete and accurate disclosure of the nature and scope of the investigation requested*; (Emphasis Added). This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(Emphasis added.)

47. As alleged previously, because Defendants' disclosures do not meet the requirement

of Section 101(c)(1) of 15 U.S.C. 7001, the disclosures do not satisfy the written requirement.

48. Moreover, even if Defendant's disclosures are deemed to satisfy Section 101(c)(1), Defendant did not comply with Section 1681d(a)(1)(b) because the disclosures fail to inform the consumer of the right to have the person who procured the report provide a complete and accurate disclosure of the nature and scope of the investigation requested.

49. Section 1681g(c) further provides summary of rights to obtain and dispute information in consumer reports and to obtain credit scores as:

(1) Commission summary of rights required

(A) In general

The Commission shall prepare a *model summary of the rights* of consumers under this subchapter.

(B) Content of summary

The summary of rights prepared under subparagraph (A) shall include a description of—

(i) the *right of a consumer to obtain a copy of a consumer report* under subsection (a) of this section from each consumer reporting agency;

(ii) the *frequency and circumstances under which a consumer is entitled to receive a consumer report without charge* under section 1681j of this title;

(iii) the right of a consumer to *dispute information* in the file of the consumer under section 1681i of this title;

(iv) *the right of a consumer to obtain a credit score* from a consumer reporting agency, and a description of how to obtain a credit score;

(v) the *method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge*, as provided in the regulations of the Bureau prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and

(vi) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) of this title, as provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title;

(Emphasis Added).

50. Defendant did not comply with 1681g(c)(1)(B)(i) because the disclosure did not state the right of a consumer to obtain a copy of a consumer report from each consumer reporting agency.

51. Defendant did not comply with 1681g(c)(1)(B)(ii) because the disclosure did not state the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge.

52. Defendant did not comply with 1681g(c)(1)(B)(iii) because the disclosure did not state the right of a consumer to dispute information in the file of the consumer.

53. Defendant did not comply with 1681g(c)(1)(B)(iv) because the disclosure did not state the right of a consumer to obtain a credit score from a consumer reporting agency and a description of how to obtain a credit score.

54. Defendant did not comply with 1681g(c)(1)(B)(v) because the disclosure did not state the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge.

55. Defendant did not comply with 1681g(c)(1)(B)(vi) because the disclosure did not state the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) of this title, as provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title.

THIRD CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff and FCRA Class)

56. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

57. Business and Professions Code section 17200 defines “unfair competition” to include any unlawful business practice.

58. Business and Professions Code sections 17203–17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure section 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

59. Federal laws require certain disclosures and proper authorization before conducting

1 background checks and obtaining information from credit and background reports in connection
2 with a hiring process.

3 60. Plaintiff and the **FCRA Class** re-alleges and incorporates by reference the FIRST
4 and SECOND causes of action herein.

5 61. Plaintiff lost money or property as a result of the aforementioned unfair
6 competition.

7 62. Defendants have, or may have, acquired money by means of unfair competition.

8 63. Defendants have violated Federal laws through their policies and practices of, *inter*
9 *alia*, routinely acquiring consumer, investigative consumer and/or consumer credit reports (referred
10 to collectively as “credit and background reports”) to conduct background checks on Plaintiff and
11 other prospective, current and former employees and use information from credit and background
12 reports in connection with their hiring process without providing proper disclosures and obtaining
13 proper authorization in compliance with the law.

14 64. The unlawful conduct of Defendants alleged herein amounts to and constitutes
15 unfair competition within the meaning of Business and Professions Code sections 17200, *et seq.*
16 Business and Professions Code section 17200, *et seq.*, protects against unfair competition and
17 allows a person who has suffered an injury-in-fact and has lost money or property as a result of an
18 unfair, unlawful, or fraudulent business practice to seek restitution on his own behalf and on behalf
19 of other similarly situated persons in a class action proceeding.

20 65. Plaintiff is informed and believes that other similarly situated persons have been
21 subject to the same unlawful policies or practices of Defendants.

22 66. Due to its unfair and unlawful business practices in violation of Federal laws as
23 alleged herein, Defendants have gained a competitive advantage over other comparable companies
24 doing business in the State of California that comply with their legal obligations.

25 67. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
26 herself and the other members of the **FCRA Class**, seeks declaratory relief and restitution of all
27 monies rightfully belonging to them that Defendants did not pay them or otherwise retained by
28 means of its unlawful and unfair business practices.

68. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates or is considered unlawful under any other state or federal law.

69. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining Defendants, and each of them, and their agents and employees, from further violations of the FCRA; and upon a final hearing seek an order permanently enjoining Defendants, and each of them, and their respective agents and employees, from further violations of the FCRA.

70. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff and the other members of the **FCRA Class** are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Statutory penalties;
- E. Civil penalties;
- F. Punitive damages;
- G. Injunctive relief;
- H. Costs of suit;
- I. Interest;
- J. Restitution;
- K. Reasonable attorneys' fees; and
- L. Such other relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial on all issues so triable.

DATED: May 7, 2018

SETAREH LAW GROUP

/s/ Shaun Setareh

SHAUN SETAREH
Attorneys for Plaintiff
JENNIFER RIVERA